


ORDERED.

Dated: February 25, 2019



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 Karen S. Jennemann  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
 MIDDLE DISTRICT OF FLORIDA  
 ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
JULIE B. ZALLOUM,	)	Case No. 6:17-bk-02329-KSJ
	)	Chapter 13
Debtor.	)	
_____	)	
	)	
JULIE B. ZALLOUM,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 6:17-ap-00068-KSJ
	)	
RIVER OAKS COMMUNITY SERVICES	)	
ASSOCIATION, INC. et al.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING PENDING DISCOVERY MOTIONS**

Debtor, Julie Zalloum, has filed many discovery motions relating to various dispositive motions now resolved by the Court.<sup>1</sup> This order denies each of these discovery motions.

<sup>1</sup> Doc. Nos. 135, 136, 137, 139, 140, 141, 142, 146, 156, 162, 163, 164, 169, 171, 200, 201, 202, 211, 212, 213.

Debtor's discovery motions fall into three categories. The first group of motions revolve around issues raised by various dispositive motions and involve two general groups of opposing parties—US Bank,<sup>2</sup> who allegedly holds the first priority mortgage lien on a home owned by the Debtor in River Oaks development (the “River Village House”), and the related homeowner's association, River Oaks Community Services Association, Inc. (“ROCSA”).<sup>3</sup> The second group includes Debtor's motions to strike affidavits filed in support of the dispositive motions.<sup>4</sup> The third category includes Debtor's Amended Motion to Deem Admitted Where Defendant Neither Admitted nor Denied Request.<sup>5</sup>

### **Debtor's Discovery Disputes Related to the Dispositive Motions**

Debtor filed numerous motions contending discovery responses by US Bank and ROCSA were insufficient in her effort to oppose the various dispositive motions addressed in two related opinions.<sup>6</sup> As to US Bank, a trial is scheduled to resolve all material factual disputes and issues between the Debtor and US Bank.<sup>7</sup> As to ROCSA, all issues between ROCSA and the Debtor were decided in favor of ROCSA in a recent order relying on the principles of *res judicata* and collateral estoppel and for failure to state a claim. So, all issues relating to the dispositive motions are resolved (or set for trial). The discovery requested or considered insufficient by the Debtor and connected with these dispositive motions largely is moot. Denial of the discovery motions is justified.

But, even if there was any reason to consider these discovery disputes, I would deny each of the following motions:

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<sup>2</sup> US Bank's full name is U.S. Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-OA2 Mortgage Pass-Through Certificates, Series 2006-OA2. The Court will refer to this creditor as US Bank.

<sup>3</sup> Three other parties are related to ROCSA—River Oaks, III, Wean & Malchow, ROCSA's lawyers, and Laura Prevast, ROCSA's manager. These parties are referenced collectively as ROCSA in this order.

<sup>4</sup> Doc. Nos. 200, 201. Opposition responses were filed. Doc. Nos. 211, 213.

<sup>5</sup> Doc. No. 163. Opposition responses were filed by multiple defendants. Doc. Nos. 146, 169, 171.

<sup>6</sup> Doc. Nos. 234, 237, 238.

- Debtor’s Motion to Compel US Bank to Provide Better Answers to Request for Admissions, Interrogatories, and Production.<sup>8</sup>
- Debtor’s Motion to Compel Wean & Malchow to Provide Better Answers to Interrogatories Requests.<sup>9</sup>
- Debtor’s Motion to Compel River Oaks III to Provide Better Answers to Interrogatories Requests.<sup>10</sup>
- Debtor’s Motion to Compel ROSCA and Prevesk to Provide Answers to Interrogatories Requests.<sup>11</sup>
- Debtor’s Motion in Limine.<sup>12</sup>

Motions to compel discovery or limit admitted evidence are governed by Rule 37 of the Federal Rules of Civil Procedure.<sup>13</sup> Disposition on a motion to compel under Rule 37 is committed to the sound discretion of the trial court.<sup>14</sup> This Court’s exercise of discretion on discovery orders will be sustained absent the appellate court’s finding of an abuse of that discretion that prejudices a party.<sup>15</sup>

Federal Rule of Civil Procedure 37(a)(2)(A) provides that motions to compel discovery responses “must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.” Here, the Debtor’s certification is deficient because she fails to state whether the parties reached an impasse or whether there really is any valid unresolved issue needed judicial resolution.<sup>16</sup>

Pleadings filed in connection with discovery issues are a final option to be pursued only when negotiations fail and should never be used to raise any discovery issue for the first time. The Court expects parties to do just as the federal rules require—confer on all open issues prior

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<sup>7</sup> The trial is scheduled for June 13, 2019. Doc. Nos. 234, 241.

<sup>8</sup> Doc. No. 135. US Bank responded in opposition. Doc. No. 146.

<sup>9</sup> Doc. No. 136. Wean & Malchow filed responded in opposition. Doc. No. 142.

<sup>10</sup> Doc. No. 137. River Oaks III responded in opposition. Doc. No. 142.

<sup>11</sup> Doc. No. 140. Prevesk responded in opposition. Doc. No. 141.

<sup>12</sup> Doc. No. 139. Opposition responses were filed by multiple Defendants. Doc. Nos. 141, 142, 146.

<sup>13</sup> Incorporated into this proceeding by Federal Rule of Bankruptcy Procedure 7037.

<sup>14</sup> *Commercial Union Ins. Co. v. Westrope*, 730 F.2d 729, 731 (11<sup>th</sup> Cir. 1984).

<sup>15</sup> *Id.*

to filing any request for court action. The Court is more than willing to resolve legitimate disputes between the parties when appropriate. Certainly, parties can disagree on the completeness of a discovery response. However, the Court will not consider such disputes until the parties have attempted and been unable to resolve them.<sup>17</sup>

Here, the Debtor states she sent “correspondence” to ROCSA and US Bank in an attempt to resolve her discovery issues, but she failed to attach any such “correspondence.”<sup>18</sup> She references an exhibit, but when one reviews the exhibit, nothing is attached. Defendants state they have never received any such correspondence from the Debtor attempting to consensual resolve these discovery disputes.<sup>19</sup> I conclude there was no good faith attempt by the Debtor to resolve her discovery disputes and the first five motions are denied for failure to comply with Rule 37.<sup>20</sup> The remaining Motion to Compel Witnesses Prevesk and Malchow to Produce Requested Documents to be Brought to Deposition is denied as moot.<sup>21</sup>

### **Motions to Strike**

Debtor moved to strike two affidavits filed in support of the Defendants’ dispositive motions. Both Motions to Strike rely on the Florida Rules of Civil Procedure and Florida

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<sup>16</sup> *In re Lentek Int'l, Inc.*, No. 6:03-BK-08035, 2006 WL 2787064, at \*1 (Bankr. M.D. Fla. Sept. 12, 2006)

<sup>17</sup> *Id.* at \*2.

<sup>18</sup> *See e.g.* Doc. No. 136, ¶ 3; Doc. No. 135, ¶ 3. A review of the Motions to Compel show the exhibit is not attached. *See e.g.* Doc. Nos. 135, 136.

<sup>19</sup> Doc. No. 142, p. 2 (“Plaintiff falsely claims that on April 12, 2018, she sent ‘correspondence to Defendant’s counsel detailing several issues with Defendant’s discovery responses in a good faith attempt to avoid filing this Motion to Compel’ and further falsely claims that a copy of said ‘correspondence’ is attached to the motion ‘as Exhibit C.’ No such Exhibit ‘C’ is attached to the motion because no such ‘Exhibit C’ exists.”); Doc. No. 146, ¶ 3 (“In Paragraph 3 of the Motion to Compel, Ms. Zalloum references an April 15, 2018 letter that was purportedly sent to the undersigned which was allegedly a good faith attempt to avoid the filing of the Motion to Compel. Although Ms. Zalloum advises the correspondence is attached to the Motion as Exhibit ‘E,’ there is no Exhibit ‘E’ attached to Ms. Zalloum’s Motion. Furthermore, the undersigned counsel has not received any correspondence from Ms. Zalloum.”).

<sup>20</sup> Doc. Nos. 135, 136, 137, 139, 140.

<sup>21</sup> Doc. No. 202.

statutes.<sup>22</sup> The Florida rules and statutes relied upon are not applicable to federal court proceedings. Debtor's Motions to Strike are denied.<sup>23</sup>

**Motion to Deem Admitted**

Debtor moves to have certain items deem admitted where the Defendants have not responded (or properly responded, in the Debtor's mind) to her discovery requests. Debtor initially argues the various responses were not signed under penalty of perjury. No rule requires discovery responses to be signed under penalty of perjury. Further, the Court finds the parties' responses to the Debtor's Requests for Admissions sufficient.<sup>24</sup> Grant the parties objected to some of the requests, but that is a valid response and not a basis to deem the request "admitted." Debtor's Motion to Deem Admitted Where Defendant Neither Admitted nor Denied Request<sup>25</sup> is denied.

Accordingly, it is

**ORDERED:**

1. Debtor's various discovery motions connected to the dispositive motions (Doc. Nos. 135, 136, 137, 139, 140) are **DENIED**.
2. The Motions to Strike (Doc. Nos. 200, 201) are **DENIED**.
3. The Motion to Deem Admitted (Doc. No. 163) is **DENIED**.
4. The Motion to Compel (Doc. No. 202) is **DENIED**.

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The Clerk is directed to serve a copy of this order on all interested parties.

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<sup>22</sup> See e.g. Doc. Nos. 200 and 201 (citing Fla. Stat. § 90.801, which sets out Florida's rule against hearsay evidence) (citing Fla. R. Civ. Pro. 1.510(e), which sets out Florida's rule that affidavits shall be made on personal knowledge). Responses are at Doc. No. 211 and 213.

<sup>23</sup> Doc. Nos. 200 and 201.

<sup>24</sup> See e.g. Doc. No. 141 (ROSCA's responses to Debtor's Request for Admissions).

<sup>25</sup> Doc. No. 163.